

January 8, 2004

A Regular Meeting of the Zoning Board of Appeals of the Town of Lancaster, Erie County, New York, was held at the Lancaster Town Hall, 21 Central Avenue, Lancaster, New York, on the 8th day of January 2004, at 8:00 P.M., and there were

PRESENT:        ANTHONY ESPOSITO, MEMBER  
                     JOSEPH GIGLIA, MEMBER  
                     WILLIAM MARYNIEWSKI, MEMBER  
                     RICHARD QUINN, MEMBER  
                     ARLIE SCHWAN, MEMBER  
                     ROBERT THILL, MEMBER

ABSENT:         JEFFREY LEHRBACH, CHAIRMAN

ALSO PRESENT:  JOHANNA M. COLEMAN, TOWN CLERK  
                     RICHARD SHERWOOD, TOWN ATTORNEY  
                     JEFFREY SIMME, BUILDING INSPECTOR

The Affidavits of Publication and Posting of this Public Hearing are on file and a copy of the Legal Notice has been posted.

In the absence of Chairman Lehrbach, a motion to appoint Mr. Esposito temporary chairman was made by Mr. Quinn and seconded by Mr. Giglia.

The motion was duly put to a vote on roll call which resulted as follows:

MR. ESPOSITO	VOTED YES
MR. GIGLIA	VOTED YES
MR. MARYNIEWSKI	VOTED YES
MR. QUINN	VOTED YES
MR. SCHWAN	VOTED YES
MR. THILL	VOTED YES
MR. LEHRBACH	WAS ABSENT

Motion Carried

**PETITION OF THEODORE B. KULBACKI:**

THE 1st CASE TO BE HEARD BY THE Zoning Board of Appeals was that of the petition of Theodore B. Kulbacki, 2 Wendling Court, Lancaster, New York, 14086 for three [3] variances for the purpose of constructing a five thousand [5,000] square foot office building on property owned by the petitioner on Como Park Boulevard, Lancaster, New York immediately west of 1767 Como Park Boulevard (Edu Kids) and identified on the tax maps as SBL # 115.01-2-2.12, to wit:

- A. A variance from the requirements of Chapter 50, Zoning, Section 22C.(1) of the Code of the Town of Lancaster. The lot area is .64 acre.

Chapter 50, Zoning, Section 22C.(1) of the Code of the Town of Lancaster requires a minimum lot area of one (1) acre. A variance of .36 acre is requested.

- B. A variance from the requirements of Chapter 50, Zoning, Section 22C.(3) of the Code of the Town of Lancaster. The location of the proposed office building would result in a 14.5 foot south rear yard set back.

Chapter 50, Zoning, Section 22C.(3) of the Code of the Town of Lancaster requires a fifty [50] foot south rear yard set back. The petitioner, therefore, requests a 35.5 foot south rear yard set back variance.

- C. A variance from the requirements of Chapter 50, Zoning, Section 22C.(3) of the Code of the Town of Lancaster for the purpose of constructing a parking lot. The location of the proposed parking lot would result in a 2.19 foot west side yard set back.

Chapter 50, Zoning, Section 22C.(3) of the Code of the Town of Lancaster requires a twenty five [25] foot west side yard set back. The petitioner, therefore, requests a 22.81 foot west side yard set back variance.

**The Clerk presented and entered into evidence the following items:**

Duly executed petition of the applicant with exhibits and schedules attached thereto.

Copy of a letter notifying the petitioner of the time and place of this public hearing.

Copy of a letter notifying owners of property within 100 feet of requested variance of the time and place of this public hearing.

Copy of a letter notifying the Erie County Department of Planning of the time and place of this public hearing.

Copy of a letter notifying Depew Union Free School District, Depew Village Clerk and United States Postal Service of the time and place of this public hearing.

**PERSONS ADDRESSING THE BOARD**

Christopher Streng,  
Representative of Kulback's Construction

Proponent

Lou Izzo,  
General Manager Hunt Real Estate

Proponent

**IN THE MATTER OF THE PETITION OF THEODORE B. KULBACKI**

THE FOLLOWING RESOLUTION WAS OFFERED  
BY MR. THILL, WHO MOVED ITS  
ADOPTION, SECONDED BY MR. QUINN  
TO WIT:

**WHEREAS**, the Zoning Board of Appeals of the Town of Lancaster has reviewed the application of Theodore B. Kulbacki and has heard and taken testimony and evidence at a public hearing held before it at 21 Central Avenue, Lancaster, New York, on the 8th day of January 2004 and having heard all parties interested in said application pursuant to legal notice duly published and posted, and

**WHEREAS**, the petitioner has applied to the Town of Lancaster for an amendment to the zoning of the subject property, and

**WHEREAS**, the Town Board of the Town of Lancaster will consider the zoning amendment request in the immediate future, and

**WHEREAS**, the Zoning Board of Appeals of the Town of Lancaster wishes to consider the granting of zoning variances after zoning amendments have been determined by the Town Board of the Town of Lancaster and,

**WHEREAS**, the Zoning Board of Appeals of the Town of Lancaster, with the concurrence of the petitioner, agrees that an adjournment of this hearing is in the best interest of both the residents of the Town of Lancaster and the petitioner.

**NOW, THEREFORE, BE IT**

**RESOLVED** that this hearing be adjourned until the next regular meeting following the zoning amendment approval by the Town Board of the Town of Lancaster.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call which resulted as follows:

MR. ESPOSITO	VOTED YES
MR. GIGLIA	VOTED YES
MR. MARYNIEWSKI	VOTED YES
MR. QUINN	VOTED YES
MR. SCHWAN	VOTED YES
MR. THILL	VOTED YES
MR. LEHRBACH	WAS ABSENT

The resolution adjourning this hearing was thereupon **ADOPTED**.

January 8, 2004

**PETITION OF DAVID FULCINITI:**

THE 2nd CASE TO BE HEARD BY THE Zoning Board of Appeals was that of the petition of David Fulciniti, 26 Spruceland Terrace, Lancaster, New York 14086 for one [1] variance for the purpose of constructing a single family dwelling on property located at 242 Enchanted Forest North, Lancaster, which is owned by Forestream Village, 2 Forestream Drive, Depew, New York, for which the applicant has made an offer to purchase, to wit:

A variance from the requirements of Chapter 50, Zoning, Section 17A.(2) and (3) of the Code of the Town of Lancaster. The premises upon which this variance is sought is a corner lot fronting on Enchanted Forest North with an exterior side yard [considered a front yard equivalent] fronting on Harewood Run. The location of the proposed dwelling will result in a twenty eight [28] foot west exterior side yard set back on Harewood Run.

Chapter 50, Zoning, Section 17A.(2) and (3) of the Code of the Town of Lancaster requires a thirty five [35] foot west exterior side yard set back on Harewood Run. The petitioner, therefore, requests a seven [7] foot west exterior side yard set back variance.

**The Clerk presented and entered into evidence the following items:**

Duly executed petition of the applicant with exhibits and schedules attached thereto.

Copy of a letter notifying the petitioner of the time and place of this public hearing.

Copy of a letter notifying owners of property within 100 feet of requested variance of the time and place of this public hearing.

**PERSONS ADDRESSING THE BOARD**

David Fulcinti, petitioner  
26 Spruceland Terrace  
Lancaster, New York 14086

Proponent

**IN THE MATTER OF THE PETITION OF DAVID FULCINITI**

THE FOLLOWING RESOLUTION WAS OFFERED  
BY MR. THILL, WHO MOVED ITS ADOPTION,  
SECONDED BY MR. MARYNIEWSKI  
TO WIT:

**WHEREAS**, the Zoning Board of Appeals of the Town of Lancaster has reviewed the application of David Fulciniti and has heard and taken testimony and evidence at a public hearing held before it at 21 Central Avenue, Lancaster, New York, on the 8th day of January 2004 and having heard all parties interested in said application pursuant to legal notice duly published and posted, and

**WHEREAS**, the Zoning Board of Appeals of the Town of Lancaster has made the following findings:

That the applicant is the purchaser of property subject to variance grant.

That the property for which the applicant is petitioning is within a Residential District 1, (R1) as shown on the Zoning Map of the Town of Lancaster.

That the use sought is a permitted use appearing in the Residential District 1, (R1) as specified in Chapter 50 of the Code of the Town of Lancaster.

That the premises upon which this variance is sought is a corner lot. A home is proposed to front on 80 feet of Enchanted Forest North with a 35 foot front yard set back. The exterior side yard proposed on Harewood Run is 28 feet, 7 feet less than the code requirement.

That the premises to the rear of the subject premises is a swale and drainage ditch fronting 60 feet on Harewood Run and extending along the entire length of the rear lot line of the subject premises to an eventual depth of 239.55 feet.

That the adjacent lot owned by the Town of Lancaster is integral to the surface water drainage system of the Town of Lancaster and will not be developed as a dwelling lot.

That the granting of this variance will not adversely impact the site lines of any future dwelling erected at the south east corner of Harewood Run and Stream View Lane because it will be well in excess of 100 feet from the dwelling on the subject premises.

That strict compliance of the ordinance of the Town of Lancaster would result in a dwelling with a maximum width of 37 feet; that such a dwelling, if built in compliance with the Code of the Town of Lancaster would detract from the character of the neighborhood.

That no undesirable change will be produced in the character of the neighborhood by the granting of the area variance relief sought.

That no detriment to nearby properties will be created by the granting of the area variance relief sought.

That the benefit sought by the applicant cannot be achieved by some other method, feasible for the applicant to pursue, other than the area variance relief sought.

That the requested area variance relief is not substantial.

That the proposed area variance relief will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

That the alleged difficulty is self created but not to the extent necessary to preclude the granting of the area variance relief sought.

That this board has taken into consideration the benefit to the applicant if the variance relief sought is granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant.

That within the intent and purposes of this ordinance the variance relief sought, if granted, is the minimum variance necessary to afford relief.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call which resulted as follows:

MR. ESPOSITO	VOTED YES
MR. GIGLIA	VOTED YES
MR. MARYNIEWSKI	VOTED YES
MR. QUINN	VOTED YES
MR. SCHWAN	VOTED YES
MR. THILL	VOTED YES
MR. LEHRBACH	WAS ABSENT

The resolution granting the variance was thereupon **ADOPTED.**

January 8, 2004

**PETITION OF TIMOTHY & LINDA MCGOVERN:**

THE 3RD CASE TO BE HEARD BY THE Zoning Board of Appeals was that of the petition of Timothy and Linda McGovern, 1 Nottingham Lane, Lancaster, New York 14086 for one [1] variance for the purpose of erecting a fence ranging from five [5] feet to six [6] feet in height in a required open space area on property owned by the petitioner at 1 Nottingham Lane, Lancaster, New York, to wit:

A variance from the requirements of Chapter 50, Zoning, Section 35C. of the Code of the Town of Lancaster. The premises upon which this variance is sought is a corner lot fronting on Nottingham Lane with an exterior side yard [considered a front yard equivalent] fronting on Thomas Drive. The petitioners propose to erect a fence ranging from five [5] feet to six [6] feet in height within the required open space area of the exterior side yard fronting on Thomas Drive.

Chapter 50, Zoning, Section 35C. of the Code of the Town of Lancaster limits the maximum height of a fence or wall extending into a front yard or an exterior side yard [considered a front yard equivalent] to three [3] feet in height. The petitioners, therefore, request a three [3] foot fence height variance.

**The Clerk presented and entered into evidence the following items:**

Duly executed petition of the applicants with exhibits and schedules attached thereto.

Copy of a letter notifying the petitioners of the time and place of this public hearing.

Copy of a letter notifying owners of property within 100 feet of requested variance of the time and place of this public hearing.

**PERSONS ADDRESSING THE BOARD**

Timothy McGovern, Petitioner  
1 Nottingham Lane  
Lancaster, New York 14086

Proponent

Arthur Giacalone, Attorney  
140 Knox Road  
East Aurora, New York 14052

Opponent

THE FOLLOWING MOTION WAS OFFERED  
BY MR. ESPOSITO, WHO MOVED ITS  
ADOPTION, SECONDED BY MR. THILL  
TO WIT:

**WHEREAS**, the petitioners have substantially altered this variance request application dated December 19, 2003 from the request which was previously considered by the Zoning Board of Appeals of the Town of Lancaster on November 13, 2003,

**NOW THEREFORE**, this application for a zoning variance shall be considered as a new zoning variance application.

The motion was duly put to a vote on roll call which resulted as follows:

MR. ESPOSITO	VOTED YES
MR. GIGLIA	VOTED YES
MR. MARYNIEWSKI	VOTED YES
MR. QUINN	VOTED NO
MR. SCHWAN	VOTED YES
MR. THILL	VOTED YES
MR. LEHRBACH	WAS ABSENT

**Motion Carried**



**IN THE MATTER OF THE PETITION OF TIMOTHY & LINDA MCGOVERN**

THE FOLLOWING MOTION WAS OFFERED  
BY MR. THILL, WHO MOVED ITS  
ADOPTION, SECONDED BY MR. ESPOSITO  
TO WIT:

**WHEREAS**, the Zoning Board of Appeals of the Town of Lancaster has reviewed the application of Timothy and Linda McGovern has heard and taken testimony and evidence at a public hearing held before it at 21 Central Avenue, Lancaster, New York, on the 8th day of January 2004 and having heard all parties interested in said application pursuant to legal notice duly published and posted.

**NOW, THEREFORE BE IT**

**RESOLVED** that the Zoning Board of Appeals of the Town of Lancaster will close this hearing to further testimony and evidence, table the matter until the next regularly scheduled meeting on February 12, 2004, and reserve decision until that meeting.


The question of the adoption of the foregoing motion was duly put to a vote on roll call which resulted as follows:

MR. ESPOSITO	VOTED YES
MR. GIGLIA	VOTED YES
MR. MARYNIEWSKI	VOTED YES
MR. QUINN	VOTED YES
MR. SCHWAN	VOTED YES
MR. THILL	VOTED YES
MR. LEHRBACH	WAS ABSENT

The motion was thereupon **CARRIED**.

January 8, 2004

ON MOTION DULY MADE, SECONDED AND CARRIED, the meeting was  
adjourned at 9:50 P.M.

Signed   
Johanna M. Coleman, Town Clerk  
Dated: January 8, 2004